UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNION TANK CAR COMPANY

and	**Case No 12-RC-221465**
INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS (SMART)	**Case Nos. 12-CA-210779 12-CA-219374 12-CA-220822 12-CA-222661**

Caroline Leonard, Esq.
for the General Counsel
Hope Abramov and Conor P. Neusel, Esqs., (Thompson Coburn LLP, St. Louis, Missouri)
for the Respondent
Thomas E. Fisher, for the Charging Party

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Valdosta, Georgia on November 14, 2018. The Charging Party Union filed the charges in this case between November 30, 2017 and June 25, 2018. The General Counsel issued a complaint which included case number 12-CA-219374 on May 31, 2018. On June 28, he issued a complaint including case 12-CA-220822. A complaint including cases 12-CA-210779 and 12-CA-222661 issued on August 27, 2018. An order severing other matters and consolidating the 4 unfair labor practice cases herein and the representation case was issued on October 26, 2018.

The General Counsel alleges that Respondent has violated the Act in the following respects:

1. Maintaining an employee handbook containing rules threatening discipline, including discharge if an employee makes written or oral statements intended to injure the reputation of Union Tank Car Company or its management personnel with customers or employees; and using cell phones during work hours unless approved by management (complaint paragraph 5 (a) and (b).

2. By supervisor Graham Bridges:

a. In telling employees that there would be harsher discipline because they selected the Union as their bargaining representative (complaint paragraph 6);

b. Threatening employees with discharge if they did not sign a decertification petition (complaint paragraph 7(a));

c. Promising employees promotions if they signed the decertification petition (complaint paragraph 7(b))..

3. By Supervisor Jody James in confiscating union literature (complaint paragraph 8).

In addition the Union contends that Respondent, by Jody James, committed objectionable conduct warranting setting aside the representation election of 2018 by confiscating union literature during the critical period. That is the period between the filing of the Union's representation petition on June 5, 2018 and the representation election on June 22, 2018.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent and the Charging Party Union, I make the following

FINDINGS OF FACT[1]

I. JURISDICTION

Respondent, which has headquarters in Chicago, Illinois, repairs and maintains railroad tank cars at a number of facilities throughout the United States, including the one involved in this case in Valdosta, Georgia. Respondent annually sells and ships goods valued in excess of $50,000 directly to and from points outside the State of Georgia. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] Much of this case turns on credibility resolutions. Where demeanor is not determinative, an administrative law judge may base credibility determinations on the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that can be drawn from the record as a whole, *Daikichi Sushi,* 335 NLRB 623, 622 (2001). In no instance of controverted testimony in this case do I find demeanor determinative.

II. ALLEGED UNFAIR LABOR PRACTICES

The Representation election of June 22, 2018, the Union's objection to conduct affecting the results of the election and Complaint paragraphs 5 & 8

The Union won a representation election conducted on February 23, 2017 and was certified as the exclusive bargaining representative of a unit of Respondent's Valdosta, Georgia employees on March 6, 2017. In early 2018, employees circulated a decertification petition. Respondent withdrew recognition of the Union on March 9, 2018. On June 5, the Union filed another petition to represent all full-time and regular part-time production and maintenance employees, including leadsmen at Respondent's Valdosta, Georgia facility. An election was held in the employee breakroom between 5:30 and 7:30 a.m. and between 3:00 and 4:00 p.m. on June 22, 2018. 54 votes were case in favor of the Union; 55 were cast against union representation.

The Union filed objections to conduct affecting the June 22, 2018 election. On September 5, 2018, the Regional Director issued a Report on these Objections and an Order directing a hearing on issues that mirror complaint paragraphs 5 and 8.

Complaint paragraph 5

Respondent issued an employee handbook in August 2010, which was in effect the time of the June 22, 2018 representation election. This handbook contains 2 rules which the General Counsel contends violate the Act and that the Union contends constitutes objectionable conduct affecting the election.

At pages 21-22, the handbook list 33 rules with respect to which an employee may be disciplined or discharged for not obeying. Rule 32 prohibits, "Statements either oral or in writing, which are intended to injure the reputation of the Company or its management personnel with customers or employees."

The last sentence of Respondent's "Use of Telephone" policy on page 28 of the handbook states that, "Cell phones will not be allowed in use during work hours or in work areas at any time unless approved by management."

In December 2017, on advice of counsel, John Bauer, Respondent's Director of Shop Operations, advised Valdosta Repair Manager William Giddens and managers at other Union Tank installations that Rule 32 and the prohibition against cell phones would no longer be enforced. Employees are now allowed to use their cellphones while on break. Employees at Valdosta were not told that Rule 32 was no longer being enforced and that the cell phone policy had been changed until October 2018, months after the June 22, 2018 election.

Procedural Issue regarding alleged objectionable conduct

The Union's filed objections to the June 22, 2018 election based on, "outstanding and unresolved ULP's in Consolidated Complaint (Cases 12-CA-209024, 24382, 216226, 216231,

219374) and a new ULP filed on Jody James regarding his conduct on or about the week of June 18, 2018." It did not mention the charge in Case 12-CA—210779, which was filed on November 30, 2017, alleging that maintenance of the handbook rules was illegal. The Regional Director concluded that a hearing should be held on this issue because it appears that the Union likely intended its objections to encompass all outstanding unfair labor practice charges, even those not included in a complaint at the time it filed its objections on June 25, 2018. A complaint covering the charge in 12-CA-210779 was not issued until August 27, 2018, G.C. Exh. 1(u).

Respondent contends that the Board should not consider whether the maintenance of the rules or Jody James' alleged confiscation of union literature constitutes objectionable conduct because to do so is inconsistent with the Board's Rules of Procedure. Rule 102.69(a) states that objections must be filed within 7 days of the tallying of ballots with a short statement of the reasons. 102.69(b) provides that if no timely objections are filed, the Regional Director shall issue a certification of the results of the election.

Complaint paragraph 8

Terrell Daugherty, then a tank car repairman,[2] passed out or placed union flyers on tables in Respondent's break room on June 21, 2018, the day prior to the representation election at about 8:30 a.m. The first shift (repair and other departments) was on break between 8:30 and 8:45. Somewhere in the vicinity of 18-22 employees took this break in this breakroom on June 21.

Shortly after the break started Jody James, a repair supervisor, entered the room. Prior to the beginning of the weekly safety meeting that James was about to conduct at 8:45, he walked around the table or tables in the breakroom and picked up all the flyers.[3] When he sat down, James said that the Union had committed a "federal violation" by distributing the flyers.[4] James did not replace the flyers after his safety meeting ended.

[2] Since the election Daugherty has been promoted to a quality assurance inspector position, which is outside of the bargaining unit.

[3] There is a dispute as to how many flyers James picked up. Daugherty testified that he distributed 20-30; repairman Joe Queen testified he saw about 10 flyers, but in an affidavit stated that James picked up about 3. James testified he picked up 3 flyers. Chad Morgan testified that he saw 2-3 flyers in the breakroom. Leadman Tim McEady testified that he saw about 3 flyers. Zachary Timpson, called by Respondent as a witness, was sitting in the back of the breakroom between 8:30 and 8:45 on June 21. He testified to seeing 20 or more union papers on the tables in the breakroom. George Padgett testified that he was sitting alone in the back of the breakroom that morning, a fact about which he is obviously wrong. Padgett testified to seeing 2-3 flyers. I find that the number of flyers James picked up is irrelevant to whether Respondent, by James, violated Section 8(a)(1).

[4] James and other witnesses deny that James made this statement. However, in explaining why he picked up the flyers, James testified that he had been told by higher company management that there could not be any kind of flyers or posters in the polling area within 24 hours of the election, Tr. 186-87. It is likely that James gave the employees some explanation as to why he was collecting the flyers. He did not tell employees that he collected them because he needed their undivided attention. Thus, I credit Daugherty and others that he said he collected them because the Union had violated federal rules since James' understanding was that the Union had done so. James could have been confused by the *Peerless Plywood* rule (107 NLRB 427 (1953) which prohibits mass meetings within 24 hours of a Board election.

Daugherty also left the same union flyer in the employee restroom/locker room. These were not disturbed by management. Management also did not interfere with the wearing of pro-union employee t-shirts or, so far as this record shows, otherwise interfere with the union's campaigning.

Procedural Issue regarding the whether the Union's claim that James committed objectionable conduct is properly before the Board

When the Union filed objections to conduct affecting the results of the election it mentioned a number of outstanding charges filed prior to the beginning of the critical period and "a new ULP filed on Jody James regarding his conduct on or about the week of June 18, 2018." That charge, 12-CA-222661 alleged that James threatened retaliation against employees who joined or supported the Union and that James engaged in surveillance or created the impression of surveillance of employees' union activities. This charge did not allege that James engaged in objectionable conduct in confiscating union literature during the critical period.

Jones' alleged confiscation of literature was first raised by the Union in its second amended charge in case 12-CA-222661 filed on August 3, 2018.

Complaint paragraph 6

In early 2018, Respondent suspended employee Ridge Wallace for 30 days for failing to sign a hot work permit. Respondent allowed Wallace to serve his suspension between Tuesdays and Thursdays of each week for 10 weeks. This allowed Wallace to retain his health insurance. Sometime in March 2018, Wallace had a conversation with welding supervisor Graham Bridges. Bridges told Wallace that if it were not for the Union, he would have received a written warning instead of a 30-day suspension.[5] I credit Wallace's testimony over that of Graham Bridges. First of all, Wallace, who left Respondent's employ voluntarily in September 2018, had less motive to make up his story than Bridges had to deny it.

Complaint paragraph 7

Sometime in about March 2018, while employees were circulating a decertification petition, Quinn Sowell, a repairman then on second shift, went to the office of Graham Bridges, the second shift supervisor. Sowell went to Graham because he felt that leadman Michael Weeks was being too hard on him, and/or because a leadperson circulating the decertification petition told Sowell that employees would lose their jobs if they did not sign it, Tr. 88-90, 171-72.

However, that rule does not prohibit the distribution of literature within 24 hours of an election, *General Electric Company,* 161 NLRB 618 (1966).

[5] Respondent admitted that Bridges and Jody James were employed as supervisors from 2007 and 2001 respectively, but in its Answer denied the General Counsel's reliance on the term "all material times." I find that in not denying that Bridges and James were statutory supervisors and agents, Respondent admitted this allegation. Moreover, in Bridges' case the record establishes his authority to effectively recommend discipline, Tr. 161, *Oakwood HealthCare, Inc.,* 348 NLRB 686, 687-88 (2006). This in of itself is sufficient to deem Bridges a statutory supervisor.

> Sowell's testimony, which I credit, is as follows:
>
> I went to Graham Bridges to worry about my job, losing my job. I didn't sign it. And we have a conversation that went with—that he knew they can't technically fire me for not signing it. They can find the reasons to fire me.
>
> . . . .
>
> We mostly talk about how if I did sign the petition there'll be more likely more opportunities in Union Tank Car that I would not have if I signed it.[6]
>
> Tr. 89-90.

The allegations in complaint paragraph 7 present a clear cut case for a credibility resolution. I credit Sowell's testimony over that of Bridges and Weeks. Bridges and Weeks had far more motivation to deny Sowell's account than Sowell had to invent his story whole-cloth. There is no presumption that the testimony of a current employee, which is adverse to their employer, is credible. However, the Board recognizes that "the testimony of current employees which contradicts statements of their supervisors is like to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests." *Flexsteel Industries,* 316 NLRB 745 (1995); *Gold Standard Enterprises,* 234 NLRB 618, 619 (1978); *Georgia Rug Mill,* 134 NLRB 1304, 1305 n. 2 (1961).

Moreover, neither Bridges nor leadman Michael Weeks directly contradicted any of Sowell's testimony. Bridges did not *remember* or *recall* a conversation with Sowell regarding the decertification petition or meeting alone with Sowell in his office. Sowell testified that leadman Michael Weeks was present for the conversation. Weeks unconvincingly denied being present, but recalls Sowell meeting alone with Bridges, Tr. 171-72.

Analysis

The Rules Violations

This case is governed by the Board's recent decision in *The Boeing Company,* 365 NLRB No. 154 (2017). In *Boeing,* the Board delineated 3 categories of "rules." Category 1 rules are those which are lawful because they either (1) do not prohibit or interfere with employee Section 7 rights when reasonably interpreted, or (2) the employer's justification for the rule outweighs the potential adverse impact on protected rights. Category 2 rules are those which warrant individualized scrutiny as to whether they prohibit or interfere with section 7 rights and whether legitimate justifications outweigh any adverse impact on these employee rights. Category 3 rules

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[6] I infer that the import of what Bridges said to Sowell was that he would be more likely to be promoted if he signed the decertification petition than if he did not sign it. The General Counsel moves in his brief to correct the transcript to read, " We mostly talk about how if I did sign the petition there'll be more likely more opportunities in Union Tank Car than I would not have if I **didn't** signed it." I find this unnecessary since from the context what Sowell intended to convey is perfectly clear.

I specifically discredit the testimony of Shop Operations Director John Bauer regarding Graham Bridges' role in selecting leadmen. Michael Weeks testified that supervisors choose their own leadmen, and that Bridges selected him, Tr. 173-74. Weeks' testimony is this regard is evidence of a motive to testify in such manner so as to not implicate Bridges in the commission of an unfair labor practice.

are those which are unlawful because the justification for their maintenance does not outweigh their adverse impact on employee Section 7 rights. A rule which is not unlawful to maintain, may be unlawful as applied. However, application of Respondent's rules is not an issue in this case.

Rule 32 prohibition

Under the pre-*Boeing* standard, the Board found that rules very similar to Respondent's rule 32 ["Statements either oral or in writing, which are intended to injure the reputation of the Company or its management personnel with customers or employees."] **would** not be reasonably read as encompassing Section 7 activity. In *Albertson's* 351 NLRB 254, 258-59, the Board held that a rule prohibiting off-the -job conduct which has a negative effect on the company's reputation…" did not violate the Act. In *Lafayette Park Hotel,* 326 NLRB 824, 826-27 (1998) the employer maintained a rule prohibiting improper conduct off the hotel's premises or during non-working hours…which affect the hotel's reputation or good will in the community. The Board also found that this rule did not violate the Act. I find these cases dispositive and therefore find that Respondent's rule 32 is a category 1 rule and does not violate the Act. I would note that Respondent's rule at least requires intent to injure the company's reputation, while the rules found non-violative in the above cited cases did not do so.

I would also distinguish *Claremont Resort & Spa,* 344 NLRB 832 (2005), cited by the General Counsel, from this case as well. Claremont's rule prohibiting "negative conversations about associates and/or mangers" is more directly aimed at protected conversations in which employees criticize their managers with regard to working conditions. Moreover, Claremont's rule says nothing about intent. Respondent's rule in prohibiting statements intended to injure the reputation of management personnel, at least suggests that the rule is aimed at maliciously false statements.[7]

Prohibition of cell phones

While Respondent's witnesses testified that employees were allowed to use their cell phone during breaks and lunches in non-work areas, that is not what Respondent's use of telephone policy states. There is similarly no evidence that Respondent ever advised employees that cell phone use was allowed during breaks, lunches, etc. The rule, as written, clearly prohibits cell phone use in non-work areas at any time during the workday and is presumptively invalid, *Our Way,* 268 NLRB 394 (1983); *Whole Foods,* 363 NLRB No. 83, slip op. at 3 (2015). Respondent has not provided any convincing justification for the rule as written and thus has not overcome the presumption. The fact that the rule was rescinded *sub silento* is irrelevant to whether it was violative in June 2018. Since the rule violates the Act on its face, the fact that it may not have been enforced or was ignored is also irrelevant. Moreover, pursuant to *Boeing,* the fact that Respondent rescinded the rule establishes that the employer's justification for the rule did not outweigh the potential adverse impact on protected rights. Finally, the fact that the Union had

[7] The Board's decision in *Southern Maryland Hospital,* 293 NLRB 1209, 1222 (1989) is harder to distinguish from the instant case. The hospital's rule provided for discipline for "malicious gossip or derogatory attacks on fellow employees, patients, physicians or hospital representatives." Thus, one could posit that derogatory attacks would have to be malicious to warrant discipline. I suspect subsequent Boards may have come out differently with regard to the employer's rule in that case.

other means of communicating its message does not negate the violative nature of Respondent's illegal prohibition on cell phone use during non-work time in non-work areas, see, *Bon Marche,* 308 NLRB 184, 185 n. 7 (1992).

The Board's usual policy is to direct a new election whenever an unfair labor practice occurs during the critical period. However, the "Board has departed from this policy in cases where it is virtually impossible to conclude that the misconduct could have affected the election results." In determining whether the misconduct could have affected the election result, the Board has considered the number of violations, their severity, the extent of dissemination, the size of the unit and other relevant factors, *Clark Equipment Co.,* 278 NLRB 498, 505 (1986).

This record does not even establish that employees were aware that the cellphone rule that had been maintained since 2010 prohibited their use on breaks. Therefore, I find that it is virtually impossible to conclude that maintenance of this rule could have affected the election results.

Alleged Violative Statements

The test as to whether an employer's statement or conduct violates Section 8(a)(1) is whether it may reasonably be said that the conduct or statement tends to interfere with employee rights under the Act. The employer's motive in making the statement or engaging in the conduct is irrelevant to whether it violated Section 8(a)(1), *American Freightways Co., Inc.,* 124 NLRB 146, 147 (1959).

Respondent, by Jody James, violated Section 8(a)(1) by confiscating the union's flyers in the breakroom

Employees generally have a protected right to possess union materials at their place of work absent evidence that possession of union materials interferes with production or discipline. Thus employer confiscation of union materials from a non-working area violates Section 8(a)(1), *Brooklyn Hospital,* 302 NLRB 785 n. 3 (1991);[8] *Intertape Polymer Corp.,* 360 NLRB 957, 969 (2014) enfd. in relevant part 801 F. 3d 224 (4th Cir. 2015); on remand 363 NLRB No. 187 (2016); *Ozburn-Hessey Logistics, LLC*., 357 NLRB 1632 and n. 5, 1637-38 (2011).

The violation by James does not warrant directing a new election

The Board's usual policy is to direct a new election whenever an unfair labor practice occurs during the critical period. However, the "Board has departed from this policy in cases where it is virtually impossible to conclude that the misconduct could have affected the election results." In determining whether the misconduct could have affected the election result, the Board has considered the number of violations, their severity, the extent of dissemination, the size of the unit and other relevant factors, *Clark Equipment Co.,* 278 NLRB 498, 505 (1986).

[8] Another exception would be if the employer had a rule prohibiting possession of other personal items-although I doubt that in most instances this would save a rule prohibiting union materials in non-work areas.

In this instant case, the timing of the unfair labor practice on the day before the election and the closeness of the election result (55-54) would support ordering a second election. The number of employees witnessing the violation, 18-22 out of 116 eligible voters would also support a new election.[9] Nevertheless, I conclude that the results of the June 22, 2018 should be certified. First of all, the number of violations and the nature of the violation tend to support a conclusion that James' violation could not have affected the election result. Moreover, I am influenced by the fact that in filing timely objections, the Union did not mention James' confiscation of literature even though it was aware of it almost immediately, Tr. 35. Finally, without necessarily deciding whether the objection to James' conduct is properly before me, I conclude that Respondent has raised a non-frivolous issue that it is not.[10]

Finally, I recognize that my decision may be inconsistent with the Board decision on remand in *Intertape Polymer Corp.,* 363 NLRB No. 187. However, while James' confiscation of union literature was a one-time event, the confiscation in *Intertape* occurred on at least 3 occasions. Moreover, a supervisor in *Intertape* told an employee that he could not leave union materials in the breakroom in the future, a month after the confiscations, but still during the critical period and 4 days before the election, 360 NLRB at 965. Another distinction between this case and the Board's remand decision in *Intertape* is that the second election had already been conducted when the Board issued its remand decision. Finally, the *Intertape* case presents none of the procedural issues that are present in the instant case.

Respondent, by Graham Bridges, violated Section 8(a)(1) in suggesting to Quinn Sowell that he might be fired for pretextual reasons.

Bridges' told Sowell that Respondent could find reasons to fire him even though it could not fire him for declining to sign the decertification. This was a veiled threat that Sowell might be discharged for pretextual reasons. As such it was coercive and a violation of Section 8(a)(1), *Frenchy's K & T and Earl's News Stand,* 247 NLRB 1212, 1221 (1980); *Kanawha Manufacturing Company*, 212 NLRB 51, 52 (1974). This statement would tend to inhibit Sowell from declining to sign the decertification petition and thus interfered with his rights under the Act.[11]

[9] It is also likely that James' confiscation of the flyers prevented 2nd and 3rd shift employees from having access to the flyers in the breakroom.

[10] The General Counsel's failure to support the Union's position with regard to a new election, indicates some misgivings on his part as to whether the objection regarding James' confiscation of materials is properly before me. Given the Board's decision in *Intertape* it would surprise me if the General Counsel agrees that the violation could not have affected the results of the election.

[11] Bridges may not have had authority to discipline or discharge an employee without approval from higher authority. However, he clearly had the authority to effectively recommend discipline. He submitted 2 write-ups to higher level management, both of which were approved, Tr. 161.

Respondent, by Graham Bridges, violated Section 8(a)(1) in telling Quinn Sowell that he might have better opportunities with Respondent if he signed the decertification petition than if he did not sign it.

An employer violates Section 8(a)(1) if it promises or suggests that an individual employee's or employees' benefits or prospects generally will improve if they sign a decertification petition, *Equipment Trucking Co.,* 336 NLRB 277, 282-83, 287 (2001). That is exactly what Graham Bridges did in his conversation with Quinn Sowell. Thus, Respondent, by Bridges violated Section 8(a)(1). This statement would tend to pressure Sowell to sign the decertification petition and thus also interfered with his rights under the Act.

Respondent, by Graham Bridges, did not violate the Act in telling Ridge Wallace that his 30-day suspension would have been a written warning but for the Union

Generally, an employer does not violate the Act by informing employees that unionization will bring about a change in the manner in which employer and the employee deal with each other, *International Baking Co. & Earthworms,* 348 NLRB 1133, 1135 (2006). I infer from this that a statement as to how the employer dealt with the employee in the past due to unionization also does not violate the Act. On the other hand, it would seem to me that such a statement is likely to influence whether or not an employee would sign a decertification petition and does interfere with his or her Section 7 rights. In this case, however, it is not clear whether Bridges made this statement before or after Respondent withdrew recognition from the Union on Friday, March 9, 2018. Thus, I dismiss the allegation in complaint paragraph 6.

CONCLUSION OF LAW

Respondent violated Section 8(a)(1) of the Act as follows:

1. By maintaining a rule that prohibited possession of cell phones and cell phone use during non-work hours in non-work areas.

2. By Graham Bridges in implying that an employee might be disciplined or discharged for pretextual reasons if that employee did not sign a decertification petition.

3. By Graham Bridges in suggesting that an employee or that employees generally would have greater opportunities if they signed a decertification petition.

4. By Jody James in confiscating union literature in the employee breakroom during the critical period between the filing of the representation petition and the Board election.

Recommendations Regarding Objections

Generally, the Board will set an election and order a new election whenever an unfair labor practice occurs during the critical period between the filing of the representation petition and the election. The only exception to this policy is where the misconduct is de minimis, such that it is virtually impossible to conclude that the election outcome could be affected. In

assessing whether the misconduct could have affected the result of the election, the Board has considered the number of violations, their severity, the extent of dissemination, the size of the unit, the proximity of the misconduct to the election and the closeness of the vote. It also considers the position of the managers who committed the violations, *Bon Appetit Management Co.,* 334 NLRB 1042 (2001); *Caterpillar Logistics,* 362 NLRB No. 49 (2015) enfd. 835 F. 3d 536 (6th Cir. 2016).

For the reasons stated herein, I recommend that the election results be certified that a majority of the valid ballots were not cast for The International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) and that is not the exclusive bargaining representative of Respondent's Valdosta unit employees.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Union Tank Car Company, Valdosta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with job loss, loss of promotion opportunities or other means of discrimination if they decline to sign a petition to decertify the Union.

(b) Implying that employees may benefit in terms of promotion, preferential treatment or other benefits if they abandon support for the Union.

(c) Confiscating union literature from employee breakrooms or other non-working areas.

(d) Maintaining a handbook rule that on its face prohibits the use of cell phones in non-work areas during non-working times.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Valdosta, Georgia facility copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2018.

(b)Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 11, 2019

Arthur J. Amchan

Arthur J. Amchan
Administrative Law Judge

13 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with job loss or loss of promotion opportunities or otherwise discriminate against them if they decline to sign a petition to decertify The International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) or any other union.

WE WILL NOT tell employees that they are likely to have better opportunities, such as promotions, preferential treatment or other benefits if they sign a petition to decertify or otherwise abandon support for The International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) or any other union.

WE WILL NOT confiscate union material from employee breakrooms or other non-working areas.

WE WILL NOT maintain a rule that prohibits the use of cell phones by employees in non-work areas during times when they are not working.

WE WILL NOT In any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

UNION TANK CAR COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

South Trust Plaza, 201 East Kennedy Boulevard, Suite 530, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-210779 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2455.